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C O N F I D E N T I A L SECTION 01 OF 02 WELLINGTON 000891

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STATE FOR EAP/ANP-DRICCI AND EB/TPP-ESAEGER
STATE PASS USTR-LCOEN
COMMERCE FOR ABENAISSA/4530/ITA/MAC/AP/OSAO

E.O. 12958: DECL: 11/15/2015
TAGS: EINV ECIN ECON NZ ETRC
SUBJECT: UNINTENTIONALLY, NEW ZEALAND LAW IMPEDES SOME INVESTMENTS

REF: A. 04 WELLINGTON 686

¶B. 03 WELLINGTON 1247

(U) Classified by: Political-Economic Counselor Katherine B. Hadda. Reasons: 1.4 (b) and (d).

¶1. (SBU) Summary: New Zealand legislation intended to tighten the rules on foreign ownership of land is having the unintended effect of restricting sales of businesses and properties. U.S. sellers of two large investments in New Zealand -- a poultry-farm company and a stake in a forestry business -- recently have had to contend with a new rule requiring that the government be offered a right of first refusal to purchase riverbeds on properties offered for sale to foreign interests. The requirement discriminates against foreign investment by favoring a less complicated sale involving a domestic investor. New Zealand government officials want to change the law but believe the newly formed weak coalition government, coupled with the public's sensitivity over land ownership by foreigners, will not allow them to do so. End summary.

¶2. (C) A last-minute addition to the Overseas Investment Act 2005 requires that sellers of land to foreigners offer any riverbed or lakes on their property to the government first. The act provides for a process for assigning value to the riverbed or lake, and the Minister of Conservation then recommends whether the government should buy it. The act sets no deadline for the minister's decision. That, coupled with the required land survey and evaluation of the value, leaves a seller facing lengthy delays, according to Annelies McClure (protect), manager of the Overseas Investment Office (OIO). Her agency makes decisions on foreigners' applications for substantial investments in New Zealand.

¶3. (C) The riverbed provision applies to waterways more than three meters wide. It already has affected two large investments since the act took effect in August. International Paper of Stamford, Conn., in August sold its 50.5 percent stake in a New Zealand forest products company, Carter Holt Harvey (CHH), to a New Zealand firm, Rank Group Investments Limited. The price was NZ $2.50 per share, or a total of NZ $1.6 billion (US $1.1 billion). After meeting with OIO officials, International Paper's lawyers concluded that surveying the rivers on the company's New Zealand properties represented a formidable and time-consuming task. Absent the riverbed provision, McClure believes the company would have sought a foreign buyer and might have secured a higher price.

¶4. (C) Meanwhile, HJ Heinz Co. of Pittsburgh, Penn., has been trying to sell its New Zealand poultry subsidiary, Tegel Foods, since May 2005. Tegel, which has suffered from lower poultry prices, owns about 300 farms, including at least two with riverbeds. In October, Heinz offered to sell the riverbeds to the government. McClure said that the company now fears a lengthy delay as it awaits the government's decision, but that it may have little choice except to sell to a foreign buyer. There are only two other large poultry producers in the country, and if either one purchased Tegel, it would run afoul of anti-monopoly laws.

¶5. (C) McClure said government officials fear the riverbed provision will dampen foreign investment if potential investors expect difficulties in the future selling their property. She added that the provision, by making it tougher to sell to foreigners, also might prevent New Zealanders from getting the best price for sales of businesses involving land. The consequences have been contrary to the new law's intent, which was to arrest a slide in foreign investment as well as to keep iconic sites and shoreline out of foreign ownership.

¶6. (C) The government would like to fix the problem, McClure said. But Minister for Land Information Pete Hodgson, who has responsibility for the OIO, said the government probably would not touch this issue for at least another year, according to McClure. With a Labour-led government relying

on support from three minor parties, Hodgson said the government would have to carefully pick its legislative battles. Amending the Overseas Investment Act is unlikely to be among them, especially since foreign ownership of land is a highly contentious issue in New Zealand.

¶7. (U) For more than 30 years, the government has screened certain types of foreign investment. The legislation enacted in August 2005 reduced the scope of business deals requiring government review but tightened the screening of land purchases by foreigners (ref A). The OIO must give consent to foreign investments that would control 25 percent or more of businesses or property worth more than NZ $100 million. Restrictions and approval requirements also apply to land, whose sale must meet a national interest test. Under the new rules, foreign purchasers of land may be required to provide management proposals and to report regularly on their compliance with the terms of the consent.

¶8. (C) The new law was a response to public concern about foreigners buying so-called iconic sites and coastal properties. The draft legislation initially required that sellers offer any coastal land (or "foreshore") to the government first. Lakes and riverbeds were added to that provision after controversy arose over advertisements for an American-owned fishing and hunting ranch that billed its rivers as "private," McClure said.

¶9. (C) Comment: Neither Heinz nor International Paper has approached the Embassy on this issue. The Embassy will continue to monitor the law's effect on foreign investment and, particularly, on U.S. investors.
McCormick